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9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA
11 RIVERSIDE DIVISION
12

13 **JONATHAN WAYNE BOTTEN,**
14 **SR., et al.,**

15 Plaintiffs,

16 v.

17 **STATE OF CALIFORNIA, et al.,**

18 Defendants.
19

No. 5:23-cv-257 KK (SHKx)

**STATE DEFENDANTS' NOTICE
OF MOTION AND MOTION FOR
SUMMARY JUDGMENT**

Date: March 20, 2025
Time: 9:30 a.m.
Courtroom: 3 (3rd Floor)
Judge: Hon. Kenly Kiya Kato
Trial Date: July 28, 2025
Action Filed: February 17, 2023

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21 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

22 PLEASE TAKE NOTICE that on March 20, 2025, at 9:30 a.m., or as soon
23 thereafter as the matter may be heard in Courtroom 3 of the above entitled court,
24 before the Honorable Kenly Kiya Kato, Defendants California Highway Patrol
25 Officers Michael Blackwood, Isaiah Kee, and Bernardo Rubalcava will move,
26 under Federal Rule of Civil Procedure 56 and Local Rule 56-1, for summary
27 judgment on the grounds that:
28

1 (1) Defendants Kee and Rubalcava used objectively reasonable and necessary
2 force under the totality of the circumstances to overcome decedent Hector Puga's
3 resistance and the immediate threat of seriously bodily injury or death Puga posed
4 to the Defendants and other officers on scene, such that Plaintiffs' claims for
5 excessive force under the Fourth Amendment, battery under California Law, and
6 violation of the California Bane Act fail.

7 (2) The undisputed evidence shows that Defendants Kee and Rubalcava's use
8 of force during the subject incident with Puga was not directed or intended to be
9 directed at Plaintiffs, such that Plaintiffs' claims under the Fourth and Fourteenth
10 Amendment and for negligence fail.

11 (3) The undisputed evidence also shows that Defendants Kee and Rubalcava
12 did not confine, or intend to confine, Plaintiffs' movement during the subject
13 incident with Puga, such that Plaintiffs' claims under the Fourteenth Amendment
14 and for negligence fail.

15 (4) Defendants Kee and Rubalcava are entitled to qualified immunity.

16 (5) Defendant Blackwood did not owe Plaintiffs a duty of care, therefore
17 Plaintiffs' negligence claims are barred against him.

18 (5) Defendants Kee and Rubalcava's pre-shooting tactics were reasonable and
19 met the standard of care, such that Plaintiffs' negligence claims against them fail.

20 (6) Defendants Blackwood, Kee, and Rubalcava are immune from Plaintiffs'
21 negligence claims because Defendants acted in self-defense or in defense of others.

22 The motion is based on this Notice, the Memorandum of Points and
23 Authorities, the Statement of Uncontroverted Facts, the Declaration of Diana
24 Esquivel, the pleadings, records, and files in this action, and such other matters as
25 may properly come before the Court.

26 **Informal resolution efforts.** As required under the Court's Standing Order in
27 Civil Actions and Local Rule 7-16, the parties met and conferred prior to the filing
28 of this motion. The undersigned verbally outlined the factual and legal basis for the

1 motion during the parties' January 22, 2025 telephonic conference. Plaintiffs agreed
2 to dismiss the 42 U.S.C. § 1983 and Bane Act claims against Blackwood. The
3 parties were unable to reach agreement on any of the remaining claims.¹
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5 Dated: January 30, 2025

Respectfully submitted,

6 ROB BONTA
7 Attorney General of California
8 NORMAN D. MORRISON
Supervising Deputy Attorney General

9 */s/ Diana Esquivel*

10 DIANA ESQUIVEL
11 Deputy Attorney General
12 *Attorneys for Defendants Blackwood,*
Kee, and Rubalcava

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28 ¹ The undersigned will file a stipulation and proposed order for the dismissal
of the federal and Bane Act claims against Defendant Blackwood in a few days.